

**Date: 1<sup>st</sup> April 2014**



**CONSTITUTION**

**of**

**ARGYLL AND THE ISLES COAST AND COUNTRYSIDE TRUST**

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of

### ARGYLL AND THE ISLES COAST AND COUNTRYSIDE TRUST

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## **GENERAL**

### **Type of organisation**

- 1 The organisation (“the SCIO”) will, upon registration, be a Scottish Charitable Incorporated Organisation.

### **Scottish principal office**

- 2 The principal office of the SCIO will be in Scotland (and must remain in Scotland).

### **Name**

- 3 The name of the SCIO is “Argyll and the Isles Coast and Countryside Trust”.

### **Purposes**

- 4 The SCIO’s purposes are:
  - 4.1 To advance environmental protection and/or improvement through the maintenance, management, promotion and enhancement of the natural environment (including landscape, wildlife and the marine environment, and including measures to promote biodiversity) in coast and countryside areas within the local authority area of Argyll and Bute (“the Operating Area”);

We will aim to achieve this through initiatives e.g. securing funding to recruit a paths team to upgrade and improve links within and between communities. Or launching a strategic programme to tackle the spread of invasive species where AICCT would take the role of negotiating delivery between landowners, contractors and funding bodies.
  - 4.2 To advance education, and in particular (a) through encouraging, facilitating and promoting informed and responsible public access to countryside and coastal areas within the Operating Area (and including the provision of interpretive centres, signage and other methods of conveying information) (b) increasing the level of knowledge and understanding of environmental issues (including principles of best practice) among local communities and public, private and third sector bodies and (c) conducting, arranging and/or participating in research projects within the environmental field where the results of such research are to be made available to the public;

We would aim to introduce this element to many of our projects, for example where our Paths Squad upgrade a route we would encourage them to also offer to organise groups to take led walks on the route with a view to educating about biodiversity and heritage features. Another example would be our forthcoming Community Rhododendron Management Demonstration event where community

members, contractors and landowners can take part in trials and discuss with experts the various approaches to tackling Rhododendron spread. We also hope to commission a detailed study and implementation plan on collaborative working to take Invasive Non-Native Species across the area.

- 4.3 To provide recreational facilities which will encourage public participation in outdoor leisure activities within countryside and coastal areas within the Operating Area;

For example, where new facilities for walking, cycling, horse-riding, kayaking etc. are installed, we will support delivery groups to include signage and additional information which will encourage a broad cross section of our communities to feel confident about participating e.g. distance to destination, time to walk, gradient, advisable footwear etc.

- 4.4 To advance heritage, and in particular to promote the conservation of buildings and other features of architectural and/or historical interest within the Operating Area;

We would aim to introduce this element to other projects for example where we were undertaking a project to protect and develop a tree collection we would seek funds to restore any adjacent or associated memorials or heritage features.

- 4.5 To relieve unemployment and promote volunteering within the Operating Area, and in particular through projects and initiatives connected with the delivery of the objectives set out above which provide opportunities for volunteer support, training and/or work experience;

We hope to work with the long term unemployed and offer them transferable skills training through a rural skills programme, and also offer them the chance to take up positions with our Paths Team in order that they improve their chance of future employment. We will also encourage businesses to offer their staff as volunteers for a day (paid by the companies) to undertake community and environmental projects.

- 4.6 To promote the voluntary sector within the Operating Area, and particularly through the delivery of advice and support to, and/or joint working with, organisations which are pursuing aims similar to one or more of the objectives set out above.

Our website and social media presence are being designed to act as a hub for environmental activities in the area, where interested parties will be directed to existing sites (rather than finding duplicated information on our own site).

- 4.7 To promote, establish, deliver and/or support other similar schemes and projects which further charitable purposes.

### **Powers**

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 No part of the income or property of the SCIO may be paid or transferred (directly or indirectly) to the members - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's purposes.

### **Liability of members**

- 7 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **General structure**

- 9 The structure of the SCIO consists of:-
- 9.1 the MEMBERS - who have the right to attend members' meetings (including any annual members' meeting) and have important powers under the constitution; in particular, the members elect/appoint people to serve on the board and take decisions on changes to the constitution itself;
- 9.2 the BOARD - who hold regular meetings, and generally control the activities of the SCIO; for example, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **Qualifications for membership**

- 11 Membership is open (subject to clauses 12 and 17) to the following:
  - 11.1 any individual aged 16 or over resident in Argyll and Bute who wishes to support the aims and activities of the SCIO;
  - 11.2 Argyll and Bute Council;
  - 11.3 Scottish Natural Heritage;
  - 11.4 NHS Highland;
  - 11.5 Forestry Commission Scotland.
- 12 Employees of the SCIO are not eligible for membership.

### **Application for membership**

- 13 Any individual eligible for membership under paragraph 11.1 who wishes to become a member must (subject to clause 24) submit a written application for membership, signed by him/her.
- 14 Any corporate body eligible for membership under paragraphs 11.2 to 11.5 which wishes to become a member must (subject to clause 24) submit a written application for membership, signed by an appropriate officer of that body; the body will automatically become a member of the SCIO on receipt by the SCIO of the signed application.
- 15 An individual applying for membership shall give to the SCIO such evidence to confirm eligibility for membership as the SCIO may reasonably request.
- 16 Each application for membership under paragraph 11.1 must be considered by the board at the next board meeting which follows receipt of the application and any evidence required under clause 15.
- 17 The board may, at its discretion, refuse to admit to membership any individual applying under paragraph 11.1.
- 18 The board shall notify each applicant under paragraph 11.1 promptly of its decision on whether or not to admit him/her to membership; if the decision was to approve admission, the notification shall include a request for payment of the annual membership subscription.

### **Membership subscription**

- 19 Members (excluding those admitted under paragraphs 11.2 to 11.5) shall require to pay an annual membership subscription; unless and until otherwise determined by the members, the amount of the annual membership subscription shall be £5.

- 20 The annual membership subscriptions shall be payable on or before 31 March in each year.
- 21 The members may vary the amount of the annual membership subscription and/or the date on which it falls due in each year, by way of a resolution to that effect passed at an AGM.
- 22 If the membership subscription payable by any member remains outstanding more than six weeks after the date on which it fell due - and providing he/she has been given at least one written reminder - the board may, by resolution to that effect, expel him/her from membership.
- 23 A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription

#### **Arrangements involving the SCIO's website**

- 24 The board may, if they consider appropriate, introduce arrangements under which an individual or body can apply for membership and/or membership subscriptions may be paid, by accessing the company's website (and, where applicable, links from the company's website), and completing and submitting forms electronically; the board shall ensure that any such arrangements incorporate appropriate security measures and reserve the right for the board to request signed hard copy documentation and/or evidence of eligibility in any case where the board considers that to be appropriate.

#### **Register of members**

- 25 The board must keep a register of members, setting out
- 25.1 for each current member:
    - 25.1.1 his/her/its full name and address; and
    - 25.1.2 the date on which he/she/it was registered as a member of the SCIO;
  - 25.2 for each former member - for at least six years from the date on he/she ceased to be a member:
    - 25.2.1 his/her/its name; and
    - 25.2.2 the date on which he/she/it ceased to be a member.
- 26 The board must ensure that the register of members is updated within 28 days of any change:
- 26.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or

26.2 which is notified to the SCIO.

- 27 If a member or charity trustee of the SCIO requests a copy of the register of members, the board must ensure that a copy is supplied to him/her/it within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses deleted or omitted.

### **Withdrawal from membership**

- 28 Any individual or body who/which wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed by him/her or (in the case of a corporate body) signed on its behalf by an appropriate officer; he/she/it will cease to be a member as from the time when the notice is received by the SCIO.

### **Transfer of membership**

- 29 Membership of the SCIO may not be transferred by a member.

### **Expulsion from membership**

- 30 Any individual may be expelled from membership by way of a resolution passed by not less than two thirds of those present (or represented) and voting at a members' meeting, providing the following procedures have been observed:-
- 30.1 at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
- 30.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

### **Termination of membership**

- 31 Membership will automatically terminate:
- 31.1 in the case of an individual, on death;
- 31.2 in the case of a corporate body, on the appointment of an administrator or receiver, on liquidation, on dissolution, or on striking-off.

## **DECISION-MAKING BY THE MEMBERS**

### **Members' meetings**

- 32 The board must convene a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 33 The gap between one AGM and the next must not be longer than 15 months.
- 34 Notwithstanding clause 32, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is formed.
- 35 The business of each AGM must include:-
- 35.1 a report by the chair on the activities of the SCIO;
  - 35.2 the election/re-election of charity trustees, as provided for in clauses 77 to 83; and
  - 35.3 consideration of the annual accounts of the SCIO.
- 36 The board may convene a special members' meeting at any time.

### **Power to request the board to arrange a special members' meeting**

- 37 The board must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more members) by members who amount to 10% or more of the total membership of the organisation at the time, providing:
- 37.1 the notice states the purposes for which the meeting is to be held; and
  - 37.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 38 If the board receive a notice under clause 37, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

### **Notice of members' meetings**

- 39 At least 15 working days' notice must be given of any AGM or any special members' meeting.
- 40 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 40.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or

- 40.2 in the case of any other resolution falling within clause 60 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 41 The reference to “15 working days” in clause 40 shall be taken to mean that, in calculating the period of notice, the period between (but not including):
- 41.1 the day after the notices are posted (or sent by e-mail); and
  - 41.2 the day of the meeting itself
- must include at least 15 days which are not weekends or Scottish public holidays.
- 42 Notice of every members' meeting must be given to all the members of the SCIO, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 43 Any notice which requires to be given to a member under this constitution must be: -
- 43.1 sent by post to the member, at the address last notified by him/her/it to the SCIO; *or*
  - 43.2 sent by e-mail to the member, at the e-mail address last intimated by him/her/it to the SCIO.

#### **Procedure at members' meetings**

- 44 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 45 The quorum for a members' meeting is
- 45.1 10 members;
- or, if a larger number,
- 45.2 10% (rounded upwards if necessary) of the total number of members at the time;
- present in person (in the case of a member which is a corporate body, present via its duly authorised representative) or represented by proxy.
- 46 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 47 The chair of the SCIO should act as chairperson of each members' meeting.

- 48 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

### **Voting at members' meetings**

- 49 Every member has one vote, which may be given *either* personally (in the case of a member which is a corporate body, via its authorised representative present at the meeting) *or* by proxy.

- 50 A member who/which wishes to appoint a proxy to vote on his/her/its behalf at any members' meeting:-

50.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by him/her or (in the case of a member which is a corporate body) signed by an appropriate officer of the member; or

50.2 must send by electronic means to the SCIO at such electronic address as may have been notified to the members for that purpose, a proxy form (in such terms as the board requires)

providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).

- 51 In calculating the 48-hour period referred to in clause 50, no account shall be taken of any part of a day that is not a working day

- 52 An instrument of proxy which does not comply with the provisions of clause 50, or which is not lodged or given in accordance with such provisions, shall be invalid.

- 53 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

- 54 Subject to clause 55, in relation to each resolution proposed at a members' meeting, an individual shall not be entitled to cast more than one vote (as the representative of a member which is a corporate body; or as a proxy), in addition to any vote to which he/she is entitled in his/her own right as a member.

- 55 Where members have appointed the chair of a members' meeting to vote as their proxy - and have directed the chair (through wording in the instrument of proxy) on whether he/she should vote on their behalf in favour of, or against, each resolution - the provisions of clause 54 shall not apply in relation to the chair, in acting as proxy for those members.

- 56 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member who/which appointed him/her to speak at the meeting; and need not be a member of the SCIO.

- 57 A member which is a corporate body may authorise an individual to act as its representative at any members' meeting, providing particulars of the individual so authorised and of the body which he/she is to represent are received by the SCIO prior to the commencement of the members' meeting.
- 58 An individual authorised under clause 57 as the representative of a corporate body shall be entitled to exercise the same powers on behalf of the member which he/she represents as that corporate body could exercise if it were an individual member.
- 59 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 60.
- 60 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 64):
- 60.1 a resolution amending the constitution;
  - 60.2 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
  - 60.3 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
  - 60.4 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
  - 60.5 a resolution for the winding up or dissolution of the SCIO.
- 61 If there is an equal number of votes for and against any resolution at a members' meeting, the chairperson of the meeting will be entitled to a second (casting) vote.
- 62 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other individuals present at the meeting and entitled to vote, whether as members, proxies for members or representatives of members which are corporate bodies) ask for a secret ballot.
- 63 The chairperson will decide how any secret ballot is to be conducted, and he/she will declare the result of the ballot at the meeting.

#### **Written resolutions by members**

- 64 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

## **Minutes**

- 65 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 66 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 67 The board shall make available copies of the minutes referred to in clause 65 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 120.

## **BOARD**

### **Number of charity trustees**

68 The maximum number of charity trustees is 8.

69 The minimum number of charity trustees is 5.

### **Composition of the board**

70 Subject to any vacancies which may exist from time to time, the board shall consist of:

70.1 up to 4 charity trustees appointed under clauses 74 to 76;

70.2 up to 4 charity trustees elected/appointed under clauses 77 to 83 (trustees drawn from the membership);

71 The members of the SCIO and the board should, in exercising their powers in relation to election/appointment of charity trustees, have due regard to the benefit of having representation on the board from a wide range of stakeholders - both geographically and by reference to thematic issues that are of particular relevance in the context of the work of the SCIO.

### **Initial charity trustees**

72 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the SCIO.

### **Eligibility**

73 A person will not be eligible for election/appointment to the board if he/she is: -

73.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

73.2 an employee of the SCIO.

### **Charity trustees appointed by corporate bodies - appointment/removal**

74 Each of the bodies admitted to membership under paragraphs 11.2 to 11.5 (so long as it remains a member of the SCIO) may (subject to clauses 70 and 73) by notice in writing, signed on its behalf by an authorised officer and given to the SCIO:-

74.1 appoint any individual who is a board member (or, the case of the Council, an elected member), or member of the senior management team/senior officer, of that body (providing he/she is willing so to act) to be a charity trustee; or

- 74.2 remove any individual previously appointed by it, from office as a charity trustee.
- 75 Any appointment or removal of a charity trustee under clause 74 shall have effect from
- 75.1 the date on which the relevant notice is given to the SCIO; or
- 75.2 any later date stated in the notice.
- 76 At the conclusion of each AGM, the charity trustee appointed by each corporate body will retire from office, but may then be re-appointed under clause 74.

### **Charity trustees drawn from the individual members - election/appointment**

- 77 At each AGM, the members may (subject to clauses 70 and 73) elect any individual member to be a charity trustee.
- 78 The board may at any time (subject to clauses 70 and 73) appoint any individual member to be a charity trustee.
- 79 At the first AGM, one of the charity trustees (disregarding for this purpose those appointed under clause 74) shall retire from office; the question of which of them is to retire shall be determined by some random method.
- 80 At each AGM (other than the first):
- 80.1 any charity trustees appointed under clause 78 during the period since the preceding AGM shall retire from office; and
- 80.2 out of the remaining charity trustees (disregarding for this purpose those appointed under clause 74), one shall retire from office.
- 81 The charity trustee to retire under paragraph 80.2 shall be the one who has been longest in office since he/she last elected or re-elected; as between charity trustees who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.
- 82 A charity trustee retiring at an AGM under clause 79 or 80 will (subject to clauses 70, 73 and 83) be eligible for re-election.
- 83 A charity trustee retiring at an AGM under clause 79 or 80 who has held office for a period of six years or more will not be eligible for re-election until the following AGM (ie he/she cannot serve as a charity trustee until at least one year after he/she retires from office); for this purpose:
- 83.1 the period between the date of appointment of a charity trustee and the AGM which next follows shall be deemed to be a period of one year (unless it is of less than six months' duration, in which case it will be disregarded);

- 83.2 the period between one AGM and the next shall be deemed to be a period of one year;
- 83.3 if an individual ceases to be a charity trustee and is then re-appointed as a charity trustee within a period of less than six months, he/she will be taken to have held office continuously.

### **Termination of office**

- 84 A charity trustee will automatically cease to hold office if: -
  - 84.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 84.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
  - 84.3 (in the case of a charity trustee elected/appointed under clauses 77 to 83) he/she ceases to be a member of the SCIO;
  - 84.4 (in the case of a charity trustee appointed under clause 74) if he/she ceases to be a board member (or, in the case of the Council, an elected member) or member of the senior management team/senior officer of the relevant body;
  - 84.5 he/she becomes an employee of the SCIO;
  - 84.6 he/she gives the SCIO a notice of resignation, signed by him/her;
  - 84.7 he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove him/her from office;
  - 84.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 102);
  - 84.9 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 84.10 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 85 A resolution under paragraph 84.8, 84.9 or 84.10 shall be valid only if: -
  - 85.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;

- 85.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- 85.3 (in the case of a resolution under paragraph 84.8 or 84.9) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

### **Register of charity trustees**

- 86 The board must keep a register of charity trustees, setting out
  - 86.1 for each current charity trustee:
    - 86.1.1 his/her full name and address;
    - 86.1.2 the date on which he/she was appointed as a charity trustee;
    - 86.1.3 (where applicable) the name of the corporate body which appointed him/her as a charity trustee; and
    - 86.1.4 any office held by him/her in the SCIO;
  - 86.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
    - 86.2.1 the name of the charity trustee;
    - 86.2.2 (where applicable) the name of the corporate body which appointed him/her as a charity trustee;
    - 86.2.3 any office held by him/her in the SCIO; and
    - 86.2.4 the date on which he/she ceased to be a charity trustee.
- 87 The board must ensure that the register of charity trustees is updated within 28 days of any change:
  - 87.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
  - 87.2 which is notified to the SCIO.
- 88 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the board may provide a copy which has the addresses deleted or omitted - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

### **Office-bearers**

- 89 The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary.
- 90 A charity trustee shall not be eligible to serve as the chair unless he/she was elected/appointed under clauses 77 to 83 (charity trustees drawn from individual members).
- 91 In addition to the office-bearers required under clause 89, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 92 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 89 or 91.
- 93 A person elected to any office will automatically cease to hold that office: -
- 93.1 if he/she ceases to be a charity trustee; *or*
- 93.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

#### **Powers of board**

- 94 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 95 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 96 The members may, by way of a resolution passed in compliance with clause 60 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

#### **Charity trustees - general duties**

- 97 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 97.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;
- 97.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
- 97.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
- 97.3.1 put the interests of the SCIO before that of the other party;

- 97.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
- 97.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 98 In addition to the duties outlined in clause 97, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 98.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
- 98.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 99 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 100 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) he/she may retain any personal benefit which arises from that arrangement.

#### **Remuneration and expenses**

- 100 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out his/her duties as a charity trustee.
- 101 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

#### **Code of conduct for charity trustees**

- 102 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 103 The code of conduct referred to in clause 102 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of board meetings**

- 104 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 105 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### **Procedure at board meetings**

- 106 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings shall be five.
- 107 If at any time the number of charity trustees in office falls below five, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 108 The chair of the SCIO should act as chairperson of each board meeting.
- 109 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 110 If neither the chair nor the vice chair is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 111 Every charity trustee has one vote, which must be given personally.
- 112 All decisions at board meetings will be made by majority vote.
- 113 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 114 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 115 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 116 For the purposes of clause 115: -

- 116.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 116.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

## **Minutes**

- 117 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 118 The minutes to be kept under clause 117 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 119 The board shall (subject to clause 120) make available copies of the minutes referred to in clause 117 (in each case, once signed by the chairperson of the relevant meeting) to any member of the public requesting them.
- 120 The board may exclude from any copy minutes made available to a member of the public under clause 119 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

## **ADMINISTRATION**

### **Delegation to sub-committees**

- 121 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 122 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 123 When delegating powers under clause 121 or 122, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 124 Any delegation of powers under clause 121 or 122 may be revoked or altered by the board at any time.
- 125 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Operation of accounts**

- 126 Subject to clause 127, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; at least one out of the two signatures must be the signature of a charity trustee.
- 127 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 126.

### **Accounting records and annual accounts**

- 128 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 129 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

## **MISCELLANEOUS**

### **Winding-up**

- 130 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 131 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO, as set out in this constitution.

### **Alterations to the constitution**

- 132 This constitution may (subject to clause 133) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 60) or by way of a written resolution of the members.
- 133 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Interpretation**

- 134 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 134.1 any statutory provision which adds to, modifies or replaces that Act; and
- 134.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 134.1 above.
- 135 In this constitution: -
- 135.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;

135.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

This is the proposed constitution referred to in the accompanying form, applying for an SCIO to be constituted with the name set out in clause 3 above.